

## **REMARKS**

Reconsideration of the application is respectfully requested based on the following remarks.

In the Office Action, the Examiner rejected claims 1-4. Claims 1-4 have been amended, herein, without intending to abandon or publicly dedicate any patentable subject matter, to further clarify the subject matter regarded as a claimed embodiment of the invention. As such, claims 1- 4 are currently pending.

### **OBJECTION TO THE DRAWINGS**

In the Office Action the Examiner stated, "The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "capillary space" of claim 1 as well as the "particulate separator" of claim 3 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered." Applicant has herein amended claims 1 and 3 to cancel the features of "capillary space" and "particulate separator". As such, Applicant has not corrected the drawings.

### **DRAWINGS**

Applicant notes that the published application, No. US 2005/0077383 A1, does not include Applicant's Figs. 22-25 and 27-28. Applicant has determined from the Patent Application Information Retrieval (PAIR) system that these figures were included with the filing and received by the Office. Applicant respectfully requests that the Examiner insure that these figures will be included in the published patent.

**REJECTION OF CLAIMS 1-4 UNDER 35 USC §102(b)**

In the Office Action, the Examiner rejected claims 1-4 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,235,969 to Bellm. Applicant respectfully disagrees. Applicant has herein amended claim 1 to now recite, in relevant part,

**“... a capillary break positioned circumferentially on an exterior surface of said jet approximate near-said top end and shaped to provide a break in capillary action; [and]**  
**a slot positioned vertically on said exterior surface, said slot extending from said capillary break to a point approximate said bottom end;**  
**a rod dimensioned for insertion in said slot where, when said rod is inserted in said slot, said slot and rod provide a capillary action;... wherein the shapes of said jet and said jet cap are similar in profile, such that [a] capillary space-action exists between said jet, [and ]said jet cap, said slot and said rod and said jet cap is retained in place over said jet by tension between said jet cap and jet by compression of said rod by said jet cap.”**

Support for Applicant’s amendment can be found in paragraphs [0058], [0069], [0071], [0072], [0073] and [0075] of the application as published, No. 2005/0077383, and is clearly shown in Figs. 1-4, 9-18 and 21.

Regarding claim 1, the Examiner stated “As per claim 1, Bellm discloses (See Figure 9) an atomization jet assembly having a jet (19) and jet cap (13) where the jet has a top end (at 23) a bottom end (at 18) and a capillary break via the cap (see Fig. 9, directly below figure “23”) near the top end...” Applicant respectfully draws the Examiner’s attention to Fig. 2, *element 48*, in Bellm, where a similar structure to that shown in Fig. 9, which the Examiner stated anticipates Applicant’s capillary break, is shown. In column 7, lines 28-34, Bellm states, “...the shape of the under surface of the flange plate 13 closely matching the upper surface of the closure wall 46 to provide there between capillary path 29. Spacing between the cap part 12 and closure wall 46 is maintained by *spacers 48* molded to the top surface of the closure wall 46 and the under surface of flange plate 13.” Clearly *element 48* is not a capillary break, but is a spacer to

maintain capillary path 29. Furthermore, Applicant claims **“capillary break positioned circumferentially on an exterior surface of said jet approximate said top end and shaped to provide a break in capillary action”**. If the structure that the Examiner indicates in Bellm Fig. 9 were to be positioned circumferentially, that element would block the capillary path 29 and prevent the device from operating. In contrast, Applicant’s novel capillary break provides **a break in capillary action** and does not block the path, as shown in Applicant’s Fig. 18. As such, Applicant does not believe that any structure in Bellm anticipates Applicant’s novel capillary break. Additionally, Applicant claims **“a slot positioned vertically on said exterior surface, said slot extending from said capillary break to a point approximate said bottom end... a rod dimensioned for insertion in said slot where, when said rod is inserted in said slot, said slot and rod provide a capillary action...”** Applicant cannot find any structures in Bellm’s figures or teachings in the description that show or suggest Applicant’s novel slot and rod providing a capillary action. Furthermore, Applicant’s **“jet cap is retained in place over said jet by tension between said jet cap and jet by compression of said rod by said jet cap.”** Clearly, this novel feature of Applicant’s invention is not shown or described in Bellm. In view of the forgoing discussion, Applicant does not believe that Bellm anticipates Applicant’s invention, as claimed in amended claim 1. Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. 102(b) rejection of claim 1.

Regarding claim 2, claim 2 is written in dependent form and depends from claim 1. As such, claim 2 has at least the same features and limitations as claim 1. As discussed above, for claim 1, Bellm does not anticipate Applicant’s novel features of **capillary break, slot and rod**. Therefore, Applicant does not believe that Bellm anticipates Applicant’s invention, as claimed in amended claim 2. Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. 102(b) rejection of claim 2.

Regarding claim 3, Applicant has herein amended claim 1 to now recite, in relevant part,

**“...a capillary break positioned circumferentially on an exterior surface of said jet approximate near-said top end and shaped to provide a break in**

capillary action; [and]

a slot positioned vertically on said exterior surface, said slot extending from said capillary break to a point approximate said bottom end;

a rod dimensioned for insertion in said slot where, when said rod is inserted in said slot, said slot and rod provide a capillary action ...wherein the shapes of said jet and said jet cap are similar in profile, such that [a] capillary space action exists between said jet, [and] said jet cap, said slot and said rod and said jet cap is retained in place over said jet by tension between said jet cap and jet by compression of said rod by said jet cap.”

In claim 3, Applicant is claiming ‘an aromatherapy device’ that comprises the ‘jet assembly’ claimed in claim 1. As discussed above, for claim 1, Applicant does not believe that Bellm anticipates Applicant’s “capillary break positioned circumferentially on an exterior surface of said jet approximate said top end and shaped to provide a break in capillary action”. If the structure that the Examiner indicates in Bellm Fig. 9 were to be positioned circumferentially, that element would block the capillary path 29 and prevent the device from operating. In contrast, Applicant’s novel capillary break provides a break in capillary action and does not block the path, as shown in Applicant’s Fig. 18. Furthermore, as discussed regarding claim 1, Applicant does not believe that Bellm anticipates Applicant’s novel slot positioned vertically on said exterior surface, said slot extending from said capillary break to a point approximate said bottom end and a rod dimensioned for insertion in said slot where, when said rod is inserted in said slot, said slot and rod provide a capillary action. Furthermore, it is not believed that Bellm anticipates Applicant’s novel feature of the jet cap is retained in place over said jet by tension between said jet cap and jet by compression of said rod by said jet cap. In view of the forgoing discussion, Applicant does not believe that Bellm anticipates Applicant’s invention, as claimed in amended claim 3. Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. 102(b) rejection of claim 3.

Regarding claim 4, claim 4 is written in dependent form and depends from claim 3. As such, claim 4 has at least the same features and limitations as claim 3. As

discussed above, for claim 3, Bellm does not anticipate Applicant's novel features of **capillary break, slot and rod**. Therefore, Applicant does not believe that Bellm anticipates Applicant's invention, as claimed in amended claim 4. Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. 102(b) rejection of claim 4.

In view of the foregoing discussion all rejections are believed overcome, and Applicant respectfully requests that all rejections be withdrawn.

#### **OTHER CITED REFERENCES**

The Examiner also cited other references on PTO Form-892, but did not use these references to reject the claims. As implied by the fact that these references were not used to reject the claims, these additional references do not teach or suggest the features of Applicant's claimed invention. Thus, it is submitted that all claims are patentably distinct from these additional references.

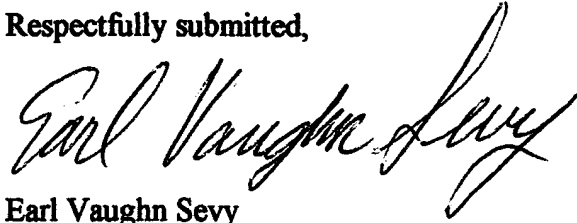
#### **CONCLUSION**

In view of the foregoing, it is respectfully submitted that all rejections have been overcome and a Notice of Allowance for this application is respectfully requested from the Examiner. If there are any issues remaining which the Examiner believes could be resolved through either a Supplemental Response, an Examiner's Amendment, or otherwise if the Examiner believes that further discussion would expedite the prosecution of this application, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number listed below.

Applicant believes that a 1 month extension fees are due in connection with this filing. Applicant hereby petition for an extension of time which may be required to maintain the pendency of this case, and for any required fee for such extension or any further fee required in connection with the filing of this Amendment, the Commissioner is hereby authorized to charge any required fees not included with this paper directly to

the credit card indicated in the attached Credit Card Payment form PTO-2038. In any case, it is requested that the Commissioner notify Applicant of any payment due that is not otherwise paid with this letter.

Respectfully submitted,

A handwritten signature in black ink, reading "Earl Vaughn Sevy". The signature is written in a cursive style with a large, stylized "E" and "S".

Earl Vaughn Sevy